

Application No. 10/763,917  
AMENDMENT dated April 12, 2006  
Reply to Office Action of March 2, 2006

### REMARKS

After entry of this amendment, claims 1-31 are pending. Claims 1-4 were rejected under 35 U.S.C. § 102(b) as being anticipated by US 4,471,689 (Piana). Claims 1-2 were also rejected under 35 U.S.C. § 102(b) as being anticipated by US 4,853,234 (Bentley). Claims 3 to 5 were rejected under 35 U.S.C. § 103 as being unpatentable over Bentley in view of Piana. Claim 5 was also rejected under 35 U.S.C. § 103 as being unpatentable over Piana in view of Bentley. Claims 6-10 were rejected under 35 U.S.C. § 103 as being unpatentable over Piana in view of Bentley and US 3,336,857 (Knodt).

Claims 11-30 were indicated to be allowable if rewritten in independent form. Claim 31 is a new dependent claim.

We request reconsideration for the reasons set forth below.

#### **I. Claims 11-30**

We thank the Examiner for the indication of allowable subject matter. As suggested, claim 11 is rewritten as an independent claim and incorporates all the limitations of claim 1.

#### **II. Claims 1-10**

Independent claim 1 requires a cartridge to include an inner member conjoined on assembly with an outer member where the *inner member comprises a discharge spout*. Neither Piana nor Bentley discloses this structure. Bentley discloses a cartridge

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formed from a single body portion 20. It does not disclose an inner member conjoined on assembly with an outer member.

Piana discloses a cartridge formed from a cup part 12 and a lip part 14. The cup part 12 is outside of the lip part 14. (*see* FIG. 2 of Piana.) The outside cup part 12 of Piana further includes a tubular appendage 22 which the Office Action refers to as a discharge spout. However, whether or not it is a discharge spout, the tubular appendage 22 is on Piana's outer member. Claim 1 requires that the inner member comprises a discharge spout. Moreover, modifying Piana to position the cup part 12 and tubular appendage 22 inside the lid 12 would render Piana's cartridge inoperable because the intake orifice 46 would then be outside the cartridge. Accordingly, neither Bentley nor Piana can anticipate claim 1 because neither reference discloses all the limitations of independent claim 1.

Knodt was cited in support of the rejection of claims 6-10, which are dependent on claim 1. However, Knodt does not make up for the deficiencies of Bentley and Piana. The cartridge container 126 of Knodt uses outlet openings 137 rather than a discharge spout. The tube 143 of Knodt's cartridge joins with the tube 34 to maintain an air passage extending throughout the coffee brewer to prevent a vacuum from forming. (*see* Col. 4, lines 9-27 and Col. 5, lines 1-5.) As a result, the proposed combination of Piana, Bentley, and Knodt does not render obvious claims 6-10 as those references fail to disclose or suggest an inner member that (1) comprises a discharge spout and (2) is conjoined to an outer member as set forth in claim 1.

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### III. New Claim 31

New claim 31 depends from independent claim 1 and further requires the discharge spout on the inner member to include a frusto-conical portion and a cylindrical portion. Support for this claim can be found in the specification on page 16, lines 10 through 16 and in FIG. 7. It is believed that dependent claim 31 is allowable for the reasons discussed above and for the further reason that none of the cited references include such discharge spout features.

### IV. Conclusion

For the reasons set forth above, reconsideration and allowance of all claims are respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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